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No. 88-673

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In the Supreme Court of the United States

OCTOBER TERM, 1988

EVELYN JORDAN, PETITIONER

v.

DONALD P. HODEL, SECRETARY OF INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner claims that (1) the district court erred in denying her a jury trial on her Title VII gender discrimination claim; and (2) the courts below erred in refusing to shift to the defendant a burden of proof by clear and convincing evidence, once petitioner established a prima facie case of gender discrimination.

1. Petitioner was hired as an administrative assistant at the United States Fish and Wildlife Service in 1972. Three years later, she filed a complaint with the Service claiming that she was the victim of gender discrimination. In particular, she alleged that her immediate supervisor Ronald DeVall suggested that it was necessary for her to engage in a sexual relationship with him in order for her to keep her job or obtain a promotion, and that after she refused his advances he retaliated against her in various ways. Administrative proceedings resulted in a finding of no discrimination. Petitioner thereafter filed a complaint in district court, alleging that she was a victim of gender

discrimination, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, on several grounds: (1) she was sexually harassed at her work place; (2) she suffered various adverse personnel actions in retaliation for her decision to refuse DeVall's advances and to file a claim of gender discrimination; and (3) she was actually and constructively discharged. Pet. App. 20-22.

The district court denied petitioner's request for a jury trial on her Title VII claim. Pet. App. 13-14. Thereafter, the district court granted partial summary judgment for the government, ruling that petitioner had not been discharged for an impermissible reason and that she was dismissed because she had refused to return to work after being on administrative leave for more than four years. App., *infra,* 1a-3a.[1] The court reserved decision on petitioner's other claims. Following a bench trial, the district court found that petitioner had not been subjected to a hostile work environment, had not been subjected to retaliation for filing an administrative complaint, and had not been constructively discharged. *Id.* at 4a-13a.[2] As the district court summarized: "It is crystal clear that Plaintiff and her immediate supervisor were not well suited to working with one another. The Court finds that it was their personality clash, not any overt or invidious sexual considerations or retaliation, that was the ultimate cause of all of the difficulties which bring this matter to Court." *Id.* at 9a.

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[1] The district court's order of October 1, 1985, is not reprinted in the petition appendix, but is reprinted in an appendix to this memorandum.

[2] The district court's decision of April 29, 1986, is not reprinted in the petition appendix, but is reprinted in an appendix to this memorandum.

The court of appeals affirmed. Pet. App. 18-38. It upheld the district court's ruling that petitioner was not the victim of a hostile or abusive work environment. *Id.* at 25-31. The court also upheld as not clearly erroneous the district court's finding that petitioner was not the victim of retaliation for rejecting DeVall's advances or for filing her Title VII administrative complaint. *Id.* at 33-36.

2. a. Petitioner claims that she was entitled to a jury trial on her Title VII claims. However, "there is no right to trial by jury in cases arising under Title VII." *Lehman* v. *Nakshian,* 453 U.S. 156, 164 (1981); see *Great American Federal Savings & Loan Ass'n* v. *Novotny,* 442 U.S. 366, 375 (1979).[3] The ability to recover backpay in a Title VII suit does not confer on a plaintiff a legal right that entitles a plaintiff to a jury trial, since "under Title VII, the availability of backpay is a matter of *equitable* discretion." *Lorillard* v. *Pons,* 434 U.S. 575, 584 (1978) (emphasis added; footnote omitted) (citing *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405, 421 (1975)).[4] Accordingly, the district court correctly denied petitioner's request for a jury trial.

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[3] Also, petitioner did not preserve that claim. Although petitioner asked for a jury trial in district court (Pet. App. 9-12), which denied her request (*id.* at 13-14), and petitioner listed that claim in her statement of issues on appeal, which was filed more than a year before her opening brief (*id.* at 15), petitioner did not present that claim in her opening or reply briefs on the merits (Appellant Br. 4, 21-48; Appellant's Reply Br. 7-25) or in her petition for rehearing (Pet. App. 39-51). The court of appeals also did not address it. Under these circumstances, petitioner abandoned her claim in the court of appeals, and this Court should decline to review it. See, *e.g.*, *Youakim* v. *Miller,* 425 U.S. 231, 234 (1976).

[4] Every court of appeals that has addressed this question has ruled that a plaintiff does not have a right to a jury trial on a Title VII claim, holding that such claims are equitable, not legal, even when back pay

b. Petitioner also contends (Pet. 9-11) that the lower courts misallocated the burden of proof in her Title VII retaliation claim. She argues that once she established a prima facie case that she had been forced to endure a hostile work environment, the government should have been required to prove by clear and convincing evidence that DeVall had no improper motive for taking adverse personnel actions against her.[5]

However, the district court found that petitioner was not forced to endure a hostile work environment, the court of appeals upheld that ruling (Pet. App. 30-31), and petitioner does not challenge it in this Court. The court of

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is sought. *Olin* v. *Prudential Ins. Co. of America*, 798 F.2d 1, 7 (1st Cir. 1986); *Sullivan* v. *School Bd. of Pinellas County*, 773 F.2d 1182, 1187 (11th Cir. 1985); *Shah* v. *Mount Zion Hospital & Medical Center*, 642 F.2d 268, 272 (9th Cir. 1981); *United States* v. *Lee Way Motor Freight, Inc.*, 625 F.2d 918, 940 (10th Cir. 1979); *Harmon* v. *May Broadcasting Co.*, 583 F.2d 410, 410-411 (8th Cir. 1978); *Slack* v. *Havens*, 522 F.2d 1091, 1094 (9th Cir. 1975); *EEOC* v. *Detroit Edison Co.*, 515 F.2d 301, 308 (6th Cir. 1975), vacated on other grounds, 431 U.S. 951 (1977); *Robinson* v. *Lorillard Corp.*, 444 F.2d 791, 802 (4th Cir.), cert. dismissed, 404 U.S. 1006 (1971); *Johnson* v. *Georgia Highway Express, Inc.*, 417 F.2d 1122, 1125 (5th Cir. 1969); see *Williamson* v. *Handy Button Machine Co.*, 817 F.2d 1290, 1293 (7th Cir. 1987); see also *Craft* v. *Metromedia, Inc.*, 766 F.2d 1205, 1209 n.3 (8th Cir. 1985), cert. denied, 475 U.S. 1058 (1986). Further, during Congress's consideration of the 1972 amendments to Title VII, which extended the Civil Rights Act of 1964 to the federal government, the Senate rejected an amendment that would have conferred a right to a jury trial in Title VII cases. *Lehman* v. *Nakshian*, 453 U.S. at 167 n.16.

[5] Petitioner did not raise that claim in her opening or reply briefs in the court of appeals, and that court did not consider it. In fact, in the petition for rehearing that petitioner filed in the court of appeals, she stated that a plaintiff bears the ultimate burden of proof on a Title VII retaliation claim. Pet. App. 46. Petitioner therefore cannot raise this claim for the first time in this Court.

appeals therefore correctly held that the only action petitioner took that could serve as the basis for a retaliation claim was her decision to file an administrative complaint. *Id.* at 33. Moreover, the court of appeals also correctly held (*id.* at 32) that petitioner's retaliation claim should be judged under the same allocation of the burdens of production and proof that apply to a disparate treatment claim. *Jones* v. *Flagship Int'l,* 793 F.2d 714, 724-729 (5th Cir. 1986); *Cohen* v. *Fred Meyer, Inc.,* 686 F.2d 793 (9th Cir. 1982). And it is firmly settled that the plaintiff bears the ultimate burden of proof on a disparate treatment claim. *United States Postal Serv. Bd. of Governers* v. *Aikens,* 460 U.S. 711, 714-716 (1983); *Texas Dep't of Community Affairs* v. *Burdine,* 450 U.S. 248, 256-257 (1981).[6] Thus, because the court of appeals applied the correct analysis to the district court's findings, the decision below does not warrant further review.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

DECEMBER 1988

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[6] Petitioner misstates (Pet. 9-10) the holding in the Ninth Circuit's decision in *Cohen* v. *Fred Meyer, Inc., supra,* by suggesting that *Cohen* mandates a shift in the burden of proof in a hostile environment situation. *Cohen* involved a retaliation claim, not a claim of a hostile work environment, and the court made perfectly clear that "[t]he ultimate burden of persuading the court that defendant unlawfully retaliated against her remains at all times with the plaintiff." 686 F.2d at 796-797.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A78-290 Civil

EVELYN JORDAN, PLAINTIFF

vs.

WILLIAM P. CLARK, SECRTARY OF THE DEPARTMENT OF THE INTERIOR, DEFENDANT

[FILED OCT. 1, 1985]

ORDER

(Partial Summary Judgment Granted)

Defendant moved for partial summary judgment on August 20, 1985. The motion is unopposed, despite the Court's minute order of September 19, 1985, directing counsel for Plaintiff to show cause within five days from the latter date why Defendant's motion for partial summary judgment should not be granted. The Court is not in the habit of soliciting opposition in his fashion, but neither does the Court wish to have matters where there is some substantial potential for disagreement decided by default.

The Court has reviewed the substance of Defendant's motion and has taken into consideration the provisions of Local General Rule 5(B)(4), which in substance provides that: "[f]ailure to file a brief by the adverse party shall be deemed an admission that, in the opinion of counsel, the motion is well taken."

On undisputed facts, the Court finds that on January 25, 1980, Plaintiff was terminated as an employee of Defendant for her refusal to return to work after November 15, 1979. The Court further finds that no appeal was taken from the foregoing administrative decision to terminate Plaintiff as an employee of Defendant.

Title 42 U.S.C. § 2000e-16(d) makes the provisions of 42 U.S.C. § 2000e-5(g) applicable to this action. The latter section provides in pertinent part:

> No order of the court shall require the . . . reinstatement . . . of an individual as an employee . . . if such individual was . . . discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

In consideration of the foregoing, the Court concludes that Plaintiff's January 25, 1980, termination was for reasons other than those proscribed by Section 2000e-5(g) and therefore reinstatement cannot be ordered by this Court on account of that termination. However, the parties must understand that this ruling does not preclude Plaintiff from pursuing her complaint, as well as the possibility of reinstatement and retroactive pay, if Plaintiff can establish (among other elements of her case) that she was constructively discharged from her job prior to January 25, 1980, on account of sex or some other discriminatory and therefore proscribed basis. *Muller v. United States Steel Corp.*, 509 F.2d 923, 930 (10th Cir.), *cert. denied,* 423 U.S. 825 (1975); *Satterwhite v. Smith*, 744 F.2d 1380, 1381 (9th Cir. 1984).

DATED at Anchorage, Alaska, this 1st day of October, 1985.

/s/ H. Russell Holland

H. RUSSELL HOLLAND
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A78-290 Civil

EVELYN JORDAN, PLAINTIFF

vs.

WILLIAM P. CLARK, SECRTARY OF THE DEPARTMENT OF THE INTERIOR, DEFENDANT

[FILED APR. 29 1986]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Court trial in this matter was concluded on March 7, 1986. The Court has considered the testimony and exhibits presented at trial and the oral argument of counsel. Based upon the foregoing and upon the joint statement of uncontested facts filed herein by the parties, the Court makes the following:

Findings of Fact

1. Plaintiff in this case is a female who began working for the United States Fish & Wildlife Service as an administrative assistant in the office of the Alaska area administrator at Anchorage, Alaska, on April 9, 1972. Plaintiff had initially been hired on November 4, 1968, by the Department of Defense in a civilian capacity as a card punch operator, GS-2 level, assigned at Elmendorf AFB. On September 9, 1969, she transferred to Fort Richardson in a GS-3 position as a clerk-stenographer, and on Octo-

ber 19, 1969, moved to an administrative clerk position at a GS-4 level with the Office of the Adjutant General in Anchorage. On December 12, 1970, Plaintiff transferred to the Alaska Railroad as a clerk-typist at the equivalent of a GS-4 level. On April 15, 1971, her position was the subject of a reduction in force.

2. Plaintiff was thereafter hired as an administrative assistant at a GS-5 level at the U.S. Fish & Wildlife Service. At this time, Plaintiff's immediate supervisor was administrative officer Ronald C. DeVall. Shortly after Plaintiff was appointed to this position and for a period of time thereafter, Plaintiff and Mr. DeVall regularly went to lunch together, and matters other than business were discussed on such occasions. During one such luncheon in May of 1982, Mr. DeVall made statements which Plaintiff understood as a sexual advance. Mr. DeVall had been known to tell jokes and make comments that had sexual overtones. At least one of Plaintiff's co-workers, Ms. Louise Waddel, had heard Mr. DeVall make such off-color comments in the past on another occasion, but had not taken him seriously.

3. In June of 1973, Plaintiff was promoted from the GS-5 level to the GS-7 level. During early spring of the following year, 1974, a review of Plaintiff's position description was made by Mr. William Struhs, a personnel officer with the U.S. Fish & Wildlife Service located in Portland, Oregon, who found she was not eligible for promotion at that time.

4. On January 13, 1975, Plaintiff notified Mr. Henry Hanson, the deputy area director for the U.S. Fish & Wildlife Service in Alaska, and its equal employment opportunity counselor, that she intended to file a formal complaint based on allegations of sex discrimination. The formal complaint, which was filed on February 26, 1975,

was investigated in April of 1975 and a report followed on April 25, 1975. The matter was reviewed, without a formal evidentiary hearing at Plaintiff's request, by the U.S. Fish & Wildlife Service which issued a report on April 26, 1976, and later by the director of equal employment opportunity for the Department of the Interior, who issued a report dated December 3, 1976. Plaintiff thereafter appealed these decisions to the Appeals Review Board of the U.S. Civil Service Commission, which issued its written decision on September 22, 1978. At Plaintiff's request, no formal hearing was ever held. Plaintiff filed the present suit in the United States District Court within thirty (30) days of receipt of this decision.

5. From May 2, 1975, until November 14, 1979, Plaintiff was on authorized "leave without pay" status at her request. Effective January 25, 1980, Plaintiff was removed from her position for refusal to return to work after November 15, 1979. No appeal was taken from this action.

6. At the luncheon meeting on May 15, 1972, at which Plaintiff understood she received a sexual advance from her supervisor, Mr. DeVall, Plaintiff and Mr. DeVall were more probably than not engaged in flirtatious conversation and conduct which could, and probably did, leave each of them with the impression that he or she had been the recipient of a sexual advance.

7. Even if expressed as an overt solicitation as contended by Plaintiff, the Court finds that the foregoing May 15, 1972, exchange between Plaintiff and Mr. DeVall did not rise to the stature of a condition of employment or promotion. Plaintiff's evidence fails to convince the Court that any adverse job action resulted from her refusal of the overture attributed to Mr. DeVall.

8. Plaintiff contends that she was harassed by telephone calls from Mr. DeVall. The evidence in this

regard is very meagre. There is clear evidence of only one telephone call to Plaintiff's residence, and this is disputed by Mr. DeVall. Plaintiff's proof fails to establish a pattern of harassment through telephone calls. Assuming that multiple telephone calls were made, the Court is not convinced that the telephoning persisted for any significant length of time, nor that it rose to the stature of condition of continued employment or promotion. Such is not even suggested by the evidence.

9. Plaintiff has made other claims of harassment. In oral testimony, the Court heard allegations of offensive touching at Plaintiff's place of work. Given the history of this case, it is inconceivable that Plaintiff would not have made these most recent allegations of sexual harassament during the course of the several years of administrative proceedings which preceded this litigation. To give Plaintiff the benefit of the doubt, and assuming that she has not simply manufactured these additional allegations of harassment, the Court finds that any physical contact between Plaintiff and Mr. DeVall on the job was of so insignificant a nature as to not rise to the stature of unwelcome sexual contact. Had the supposed contacts been of this stature, they surely would have been mentioned by Plaintiff during the course of the administrative investigation of her sexual harassment complaint.

10. Mr. DeVall was given to telling off-color stories and making occasional sexist comments in the work place. Much of this conduct appears to have been directed at men as well as women. Without meaning to condone this conduct in any degree, the evidence simply does not support a finding that the foregoing conduct, to the extent that it was unwelcome, offensive, and/or sexually discriminatory in its impact, was also sufficiently pervasive so as to alter the terms of employment and create an abusive work environment.

11. Plaintiff has contended that in the course of reevaluating her job description in 1974, duties were improperly taken away from her. The Court is not convinced that this action was an outgrowth of the refusal of an alleged sexual overture two years prior. Moreover, the evidence taken as a whole clearly establishes that there were legitimate administrative reasons for making deletions from Plaintiff's job description. The duties removed were those of a lesser grade position, and those duties in fact tended to downgrade Plaintiff's job rather than enhance its status.

12. Plaintiff has contended that she was denied a promotion to GS-9 level in June of 1974. The Court finds that Plaintiff was not entitled to such a promotion. Furthermore, there is insufficient evidence to convince the Court that Plaintiff's job might have been structured so as to qualify her for a GS-9 level, but was not so structured because of discriminatory sex considerations.

13. In summary as to the foregoing, the Court finds that Plaintiff does belong to a protected group. Plaintiff was not subject to unwelcome sexual harassment with the possible exception of the May 15, 1972, off work encounter. As to the latter, while such conduct was based upon sex, the situation was not sufficiently pervasive to alter the conditions of employment or create an abusive working environment.

14. Plaintiff has contended that her promotion from GS-5 to GS-7 in 1973 was delayed. The Court finds that there was no significant delay in this promotion, and in particular the Court finds that any delay was not occasioned because Plaintiff refused her supervisor's alleged sexual advance in May of 1972.

15. Plaintiff has claimed that she was denied management training. The Court finds that Plaintiff was afforded

substantial training at Government expense and, when certain training was denied, legitimate reasons for a refusal existed. Management training was not refused Plaintiff because of the alleged sexual advance in May of 1972.

16. Plaintiff claims that her job performance ratings were downgraded, that she received a ninety-day warning notice, and that certain other adverse memoranda were placed in her personnel file in retaliation for her filing an administrative sex discrimination complaint. While the aforementioned incidents, if viewed in isolation, might give rise to the inference of retaliation, after considering all of the evidence the Court is unable to find by a preponderance of the evidence that there has been any retaliation against Plaintiff. The conduct which Plaintiff asserts to be retaliatory appears to the Court to be more a reaction to a problem of clashing personalities than acts in retaliation for the filing of a discrimination complaint. The alleged adverse filings are certainly a reaction to Plaintiff's conduct, but the Court is not convinced that sex discrimination or the filing of Plaintiff's complaint on this subject had anything to do with Plaintiff's downgraded performance ratings, the consequential ninety-day warning, or other adverse matters placed in her personnel file.

17. It is crystal clear that Plaintiff and her immediate supervisor were not well suited to working with one another. The Court finds that it was their personality clash, not any overt or invidious sexual considerations or retaliation, that was the ultimate cause of all of the difficulties which bring this matter to Court.

18. In amplification of the foregoing, the Court finds that Plaintiff was possessed of a compelling need to achieve and succeed on her job. The Court is well aware of the fact that this attribute historically has been seen as a "plus" in men and occasionally as a "negative" quality in women. In the past it has not been uncommon for men

possessed of this quality to be characterized as "can do" people and "go-getters," whereas women with this attributes were characterized as "pushy women" or worse. The Court finds no clear evidence of the latter philosophy in Plaintiff's employment. Rather, Plaintiff's female coworkers appear to have had every bit as much difficulty relating to and working with her as did her immediate supervisor and other male personnel.

19. In her desire to promote herself, Plaintiff has come across as being divisive, presumptuous, and vitriolic. She has manipulated her physician in order to absent herself from work in the latter stages of this matter. She has taken upon herself to assume responsibilities which were not hers and, in one instance, appears to have undermined the effectiveness of her employer in a Native hire program. Plaintiff and her supervisor and Plaintiff and other employees have engaged in loud and angry arguments, some of which degenerated into the exchange of vulgar suggestions.

20. In summary, the Court finds that Plaintiff was a very disruptive influence in her workplace. The Court is convinced that Plaintiff's downgraded performance ratings and other adverse comments placed in her file were substantially justified.

21. The Court does not find nor intend to suggest that this matter was handled well by Plaintiff's employer. Indeed, it appears that during the period between 1972 and 1975, the area administrator's office for the Fish & Wildlife Service was ineffectual, both in handling what was admittedly a very difficult personnel problem as between Plaintiff and her immediate supervisor and in handling that situation when it was brought to a confrontation by Plaintiff in the context of a discrimination complaint. Be this as it may, once an outside investigator was appointed, Plaintiff's discrimination complaint was

thoroughly and exhaustively evaluated administratively. No discrimination was found and, on reexamination of that issue, the Court also so finds. A resolution of Plaintiff's complaint was offered by the employer which was fair, just, and equitable—indeed, for more than Plaintiff was entitled to in the opinion of the Court. The employer's resolution was rejected by Plaintiff.

22. On appeal, the Civil Service Commission ultimately found that there had been retaliation against Plaintiff. On retrial of that issue, the Court is convinced that the evidence does not support such a finding. As stated above, the Court finds that those actions found to have been retaliatory were not undertaken *because of* Plaintiff's discrimination complaint, but rather solely because of the dreadful interpersonal relationships which had developed between Plaintiff and her supervisors and fellow employees that were in no way sex-oriented.

23. Plaintiff contends that she was constructively discharged by Defendant prior to her formal administrative discharge. (The final administrative discharge effected by Defendant is not at issue here, having never been challenged by Plaintiff.)

24. In 1973, Plaintiff suffered a series of serious misfortunes (an automobile accident in which she received a back injury, death of an immediate family member, and major surgery unrelated to her accident). Plaintiff did not recover as rapidly as would have been anticipated from her traumatic injury, and it is very unclear from the evidence whether the back injury exacerbated the job situation or whether the reverse was true. The truth likely is that each compounded the other. More probably than not, job stresses aggravated Plaintiff's back injury, and the back injury aggravated the personality clashes between Plaintiff and her superiors and fellow employees. This situation

led to Plaintiff taking extended leaves without pay. To the extent that Plaintiff's job situation may have contributed to the leaves without pay, the operative cause was poor personnel interrelationships, not sex discrimination.

25. Plaintiff returned to work briefly in 1979 at a point in time when a period of extremely rapid growth had substantially changed the area administrator's office of the U.S. Fish & Wildlife Service at Anchorage, Alaska. The Administrative responsibilities of the Anchorage office has grown tremendously with the result that jobs were very differently structured. At this point, all of the personnel (including Plaintiff's immediate superior) who were involved in this matter from 1972 through the completion of the administrative proceedings on Plaintiff's discrimination complaint had retired or been transferred to other sites. The GS-7 job which Plaintiff had performed into early 1975 simply didn't exist anymore. As a consequence, upon her return to work Plaintiff was assigned to work under Peggy Thomas, the chief of contracting and general services of the U.S. Fish & Wildlife Service at Anchorage, Alaska. Plaintiff was assigned to do administrative work involving review and indexing of agreements between the agency and others. Although Plaintiff's new supervisor found Plaintiff's work to be satisfactory, Plaintiff was not happy with her new work and found it stressful. Plaintiff again voluntarily left her employment with the U.S. Fish & Wildlife Service at Anchorage. There is no evidence that Plaintiff's departure was anything but her own choice.

26. The Court finds that Plaintiff was not constructively terminated from her employment at the U.S. Fish & Wildlife Service at Anchorage, Alaska. Plaintiff was not forced off the job by an abusive working environment.

Conclusions of Law

(1) In light of the foregoing findings of fact, the Court concludes as a matter of law that there has not been a violation of 42 U.S.C. § 2000e-16.

(2) Plaintiff was not denied employment or advancement or other job benefits because of her sex.

(3) Plaintiff was not subjected to harassment which rose to the stature of a condition of employment or an abusive working environment.

(4) Plaintiff was not subjected to retaliation because of her filing a sex discrimination complaint.

(5) Plaintiff was not constructively terminated from her employment by reason of sex discrimination or harassment.

The Clerk of Court shall enter judgment dismissing Plaintiff's complaint with prejudice.

DATED at Anchorage, Alaska, this 29th day of April, 1986.

/s/ H. Russell Holland

H. RUSSELL HOLLAND
United States District Judge

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